

DELTA PROTECTION COMMISSION

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**AGENDA ITEM #9**

March 10, 2000

To: Delta Protection Commission

From: Margit Aramburu, Executive Director

Subject: Proposed Comments on CALFED Governance Proposal Regarding
Levees and Ecosystem Restoration
(For Possible Commission Action)

BACKGROUND:

At the last meeting, the Commission adopted comments which addressed make-up of the proposed Bay-Delta Commission. The Commission asked the CALFED Subcommittee to meet and recommend comments on the CALFED Levee program and the Ecosystem Restoration program. The CALFED Subcommittee (Mello, Shaffer and Curry) met on March 1 and directed staff to draft a letter addressing key, general issues regarding any CALFED Levee program and Ecosystem Restoration program.

CALFED has revised its Governance proposal as of February 25, 2000. Excerpts of the revised draft are attached.

The attached draft letter has been reviewed and approved by the attending members of the CALFED Subcommittee.

STAFF RECOMMENDATION:

The Commission should review the draft comments, accept public comments, and direct staff to submit comments to CALFED.

Date

Steve Ritchie, Acting Executive Director
CALFED
1416 Ninth Street, Suite 1100
Sacramento, CA 95814

Subject: Comments on the CALFED Governance Proposal regarding Levees
Program and Ecosystem Restoration Program

Dear Mr. Ritchie:

The Delta Protection Commission has been reviewing the CALFED Governance proposal. This letter provides more comments in the areas of the Levee program and the Ecosystem Restoration program, both areas of critical importance to the Delta.

Coordination with Delta Protection Commission and Local Governments:

In a letter dated January 28, 2000, the Commission commented on the proposed membership of the proposed Bay Delta Commission supporting more representation from the Delta including local government representation. Key to the implementation of the CALFED Program will be the role of coordination of programs. To ensure agreement and compliance with the important goals of the CALFED program, it will critical be at all levels, and particularly at the local level, that the CALFED program be implemented from the "bottom up", not "top down".

For all programs which will impact the Delta and Delta land uses, it is important that the CALFED program consult with the Delta Protection Commission, the State's regional land use planning agency in the Delta. The Commission can assist with coordination of programs and projects to ensure fulfillment of CALFED's goals and objectives.

Levee Subvention Program:

The Levee Subventions program currently carried out by the Department of Water Resources and Department of Fish and Game works, and works well. The program is timely, cost-effective, well-run, and has the buy-in and support of the Delta Reclamation Districts. There is a great deal of concern that changes to the program could disrupt the levee maintenance projects which are critical for protection of human life, land uses, water quality, habitat values, and flood control in the Delta region. As language regarding this program evolves, it is critical that the program be protected from budgetary and political wrangling. The program does need a continuous source of funds, and CALFED will be critical in acquiring those funds.

CALFED is supporting, through a Category 3 Directed Action grant, a study of the reuse of dredged material from the Delta waterways for both levee maintenance and creation of tidal aquatic habitat. The results of this study will hopefully support the ongoing practice of using dredged materials for levee maintenance, and will allow the regulatory process for that activity to be more cost-effective and timely.

Ecosystem Restoration Program:

In its letter of January 28, 2000, the Delta Protection Commission indicated its support of one agency to oversee the entire CALFED program, with the understanding that one agency would keep all parties at the table, ensure that all aspects of the program move forward together, provide comprehensive fiscal oversight, and be more cost-effective.

The current Governance proposal provides for the creation of a Conservancy within the CALFED program to implement the Ecosystem Restoration Program. The proposal also indicates that funds would go directly to the Conservancy, although the Conservancy would report to the Bay Delta Commission for "program direction and budget/funding". The Governance proposal should ensure that the Ecosystem Restoration program implementation entity be part of the overall CALFED program, and that authority over program direction and funding be retained by the Bay Delta Commission.

Thank you for the opportunity to comment on the CALFED Governance proposal.

Sincerely,

Margit Aramburu
Executive Director

cc: Kate Hansel, CALFED

vary between program elements depending on the nature of the program and actions, the expertise of agencies, and the ability of the agency to manage the programs without significant conflicting mandates.

Principle 11: Comparable Authority over Program Elements. Each of the Program Elements should have the same degree of autonomy from, as well as the same degree of accountability to, the Commission. For each Program Element, the Commission should exercise a comparable degree of authority over specified funding and programs.

Principle 12: Funding. Funding for implementation of the CALFED Program should be appropriated directly to the Commission for those activities to assigned to the Commission. For CALFED programs managed by a state or federal agency, funding for the program should be appropriated directly to that agency, with control language requiring Commission review, coordination, and approval of program plans and priorities.

Principle 13: Crosscut Budget. For those funds and programs not under Commission approval but which are related to CALFED (to be specified in an interagency MOU), the appropriate agencies should participate in preparing an annual Crosscut Budget to ensure coordination with the CALFED Program.

The Commission's staff, under the direction of the executive director, should be responsible for program direction, coordination and when appropriate, program management for the Program Elements. Legislation establishing the Commission should specify the roles and responsibilities of the Commission and the agencies in directing and managing the CALFED Program. Program management responsibilities for each Program Element are described in below. The CALFED Program Elements include:

- Levee system integrity
 - Ecosystem restoration
 - Watershed management
 - Drinking water quality
 - Water management
- (water use efficiency, recycling, water transfers, storage, conveyance, operations)

Levee System Integrity-- Governance Proposal.

Program Description. (See Levee Program Plan for complete program description).

The CALFED Levee Program supports the continuation of the existing levee protection programs but with greater and more reliable long-term funding, and greater integration with the other CALFED Programs. The major elements of the Levee program are:

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- Subventions and Special Projects Program.
 - Subsidence Control Plan.
 - Emergency Management and Response Plan (EMRP).
 - Delta Levee Risk Assessment.

Commission responsibilities:

- Planning. Commission staff will oversee, direct and coordinate the development of the annual workplans and long-term plans, including program priorities and actions, for the Levee program. The Commission staff will also develop the plans for those portions of the program they are responsible for managing. DWR will prepare the plans for the portions of the program they are responsible for managing. All plans will be developed in coordination with appropriate state and federal agencies, and with advice and input by technical and public advisory groups, Commission staff will prepare long-term plans and annual workplans. DWR will be the lead for developing the portion of the plans related to the Subventions and Special Projects Program and the Emergency Management Program.
- Public Involvement. Commission staff should convene and coordinate public involvement in Delta levee priorities and program implementation.
- Interagency Coordination. Commission staff should coordinate state and federal agency involvement in the Levee Program. It may be appropriate for the Commission to assume the responsibilities assigned to the Resources Agency under Section 12308 of the Water Code regarding Delta levee and habitat requirements.
- Assess program performance. Commission staff should assess program performance in meeting CALFED levee program objectives.
- Subvention and Special Projects Program. DWR should retain program management responsibility for the subvention and special projects program. Commission staff should oversee and provide program direction of DWR's subvention and special projects program activities, monitoring, priorities, and budget to ensure ongoing program integration with other CALFED objectives and consistency with the CALFED Levee program and priorities.

The Commission should have authority to review and make changes to the Subvention and Special Projects Programs with regard to program priorities and funding level to ensure integration and consistency with CALFED objectives. The Commission review and approval should occur prior to the review and approval by the Reclamation Board, as currently required under state law, for the Delta Subventions program. Final approval for the Subventions program should remain with the Reclamation Board. However, it may be appropriate to transfer final approval of the Special Projects Program from the California Water Commission to the new Bay-Delta Commission because it will represent the water management interests similar to the CWC, but could also integrate water management with the other program objectives.

- Subsidence Control Plan. Commission staff should prepare and implement a plan to reduce or eliminate the risk to levee integrity from subsidence.
- Emergency Management and Response Plan (EMRP). DWR will serve as program manager responsible for implementing the EMRP in the Delta. The Commission staff should oversee the development of the plan and the coordination of state and federal agencies participating in the EMRP. Significant work on emergency response has been done since the floods of 1997 and the Flood Emergency Task Force (FEAT) effort. This and other activities will be included in Delta emergency plan.
- Risk Management Analysis The Commission staff should conduct special studies and plans including Delta Levee Risk Assessment.

State and Federal Agency Authorities and Responsibilities.

- Department of Water Resources. DWR should continue to have program management responsibility for managing the Delta levee subventions and the Special Projects Programs. DWR should coordinate with the Commission to develop program plans and budgets to ensure program integration and consistency. DWR should submit an annual workplan to the Commission for approval. DWR will serve as program manager responsible for implementing the EMRP in the Delta. Funding will be appropriated to a DWR special emergency account. DWR should participate with in Delta levee studies and programs, including subsidence plans/studies, beneficial reuse of dredged material strategy, and the levee risk assessment and strategy.
- Corps of Engineers. Currently, the COE participates in Delta Levee programs when federal project levees are involved and in the emergency response to levee failure and floods in the Delta. The role of the COE and federal government needs to be addressed as part of proposed legislation for CALFED governance. An open issue that needs to be resolved is how the costs of the levee program are distributed. Currently the program is funded primarily by state and local funds. The Corps is considering expanding their federal interest in the Delta levees, which could increase federal funding available for Delta levee programs. If federal funding for the levee program increases, the role of the federal government and the Corps should be reevaluated in decision-making process and governance structure should be evaluated and adjusted appropriately.
- Office of Emergency Services. OES is the coordinator for emergency response in California. No change in authority or responsibility is proposed.

Funding

Initially, the Levee Program will rely on existing funding authorities, but will need increased funding commitments to meet the program objectives. Later in Stage 1, new authorizations and

funding may be provided if the Federal government declares a broader interest in the Delta. In addition, funding for the CALFED program may include user fees that could be used to support the Levee program.

The Commission should have authority to review and make changes to the program priorities, program plans and annual funding levels for the Delta Subventions and Special Projects Programs to ensure consistency and integration with the CALFED Levee Program. The Reclamation Board should retain final approval for the Subventions funds. Funds requested through the annual state budget cycle for the Delta Levee Subvention or Special Projects Program or other program actions within the scope of the CALFED Levee Program should be reviewed and coordinated with the Commission before inclusion in the Governor's Budget.

Funding for the Subvention and Special Projects Program and other DWR responsibilities described above should be appropriated to the DWR with control language that requires Commission approval of the program priorities and program plan before expenditure. To the extent legally permissible, Delta levee funding that is included in the Proposed Water Bond (\$30 million, Article 3) should be required to be coordinated and consistent with CALFED objectives and should require Commission approval before expenditure.

Ecosystem Restoration Program (ERP) -- Governance Proposal

Principle 14: Ecosystem Restoration Program (ERP). Due to the complexity and size of the ERP, there should be significant focus and accountability given to its management. A new ERP entity, under the authority of the Commission, should manage the ERP.

Program Description (See ERP Plan for complete program description).

The ERP is designed to restore the ecological health of the Bay-Delta ecosystem. The approach of the ERP is to mimic ecological processes and to increase and improve aquatic and terrestrial habitats to support stable, self-sustaining populations of diverse and valuable species. The ERP is a complex and comprehensive program whose actions are interlinked with each other and with actions in the other CALFED Program Elements. Management of the ERP will be based on scientific and biological principles and processes, and follow an adaptive management approach.

Commission Responsibilities

Commission staff should oversee and provide program direction for the ERP to ensure ERP objectives are being met and to provide integration and coordination with other Program Elements. The Commission should have final approval of the ERP plans, priorities, and project selection. Commission staff should participate in and oversee the development of a long-term plan and annual workplans, including program priorities and actions. The ERP Conservancy should be the lead agency in preparing the plans for the ERP.

New ERP Conservancy Structure and Authority

An ERP Conservancy should be established to serve as program manager for the ERP. The Conservancy should report to the Commission for program direction and budget/funding approval. The relationship between the Commission and new Conservancy is described further in the responsibilities below. The Conservancy should have a board of directors that includes the high level representatives from DFG, USFWS, and NMFS. The Conservancy should appoint an executive director to be responsible for management of the ERP.

New ERP Conservancy Responsibilities

The Conservancy should be the primary entity responsible for managing and overseeing the implementation of the ERP. The Conservancy responsibilities should include:

- Planning. The Conservancy, in coordination with Commission staff, agencies and with scientific and public input, should prepare a long-term plan and an annual workplan including program priorities and actions.
- Public Involvement and Interagency Coordination. Convene and coordinate public and interagency involvement in the ERP. Coordinate funding and projects with related ecosystem restoration programs.
- Monitoring and assessment. As part of an adaptive management approach and the Commissions' Comprehensive Monitoring, Assessment and Research Program (CMARP), the Conservancy should manage the monitoring and assessment of the program actions in achieving ERP targets.
- Independent Scientific Review. The Conservancy should establish an independent Science Review Committee/Board to aid in the development of program priorities, periodically review projects and other decisions to ensure quality control, and assess progress in meeting program targets.
- Project Selection and Management. The Conservancy should manage a financial assistance program (public solicitation and directed actions) to fund high priority actions that will address ERP targets. The Conservancy should manage a research and pilot program, as part of CMARP, to address areas of scientific uncertainty.
- Environmental Water Account (EWA). For a complete description of the EWA see the Phase 2 Report, an appendix to this Final EIS/R. The long-term management of EWA has not been determined at this time. It is expected that a decision on the management and decision-making authorities for the EWA will be made by the time of the Record of Decision. The interim governance structure, described earlier in Section 4.3 will continue until a long-term structure is in place.

State and Federal Agency Responsibilities.

Agency Implementation. The Conservancy should rely on existing state and federal fish and wildlife agencies, and private nonprofit organizations to implement individual projects and research. Final ownership of land and water rights should be held primarily by existing State and federal agencies in order to ensure long-term protection and management.

Agency Coordination. There are numerous state and federal agencies that have existing authority for fish and wildlife protection and habitat protection and restoration. These agencies, (such as the USFWS, NMFS, COE, NRCS, USFS, DFG, Delta Protection Commission) should coordinate with the Conservancy in monitoring, data collection, priority setting, project selection, cross-cut budget preparation, and co-funding projects and studies.

Additional review of existing programs is needed to identify which programs should be coordinated with the ERP and how that coordination should be achieved. Certain programs and funding that have been identified that should be coordinated with the CALFED ERP include:

- CVPIA, portions of the Act, administered by USFWS, USBR, DFG, and DWR
- ESA Biological Opinions and Recovery Plans, administered by USFWS, NMFS, DFG
- Central Valley Habitat Joint Venture
- Refuge and Wildlife Area Management, administered by USFWS and DFG
- Section 1135 of WRDA, administered by the Corps of Engineers
- 1996 Farm Bill programs, administered by the NRCS
- Delta Four Pumps Agreement, administered by DWR and DFG
- Tracy Fish Agreement, administered by USBR and DFG
- Section 319 of the Clean Water Act, administered by the SWRCB and EPA
- Sacramento and San Joaquin River Comprehensive Plan, administered by USACE and Reclamation Board

The CVPIA, managed by the USBR and the USFWS, is one of the larger programs in California related to the CALFED ERP. Both programs address many of the same objectives but have separate and independent mandates. Therefore close coordination of the two programs is essential. Where the objectives of the two programs overlap; annual workplans, crosscut budgets, priorities, project selection and funding should be coordinated. The ERP and the related portions of the CVPIA should prepare a Joint Annual Workplan. The Joint Annual Workplan should be submitted to the Commission, which should have authority to review and comment on the CVPIA components of the plan.

Funding

The ERP is expected to rely primarily on new funding sources to implement the program because in most cases the program is proposing new initiatives on top of existing base programs which are critical to the ERP or are supporting other mandated activities. Initially, the program will rely on public funding through state and federal appropriations. Later in Stage 1, new

funding mechanisms such as user fees may be adopted. The list of funding source below includes only those funding sources currently available or potentially available in the near term. (Note: If the Conservancy is not established as a joint state and federal entity, then state and or federal funding can be appropriated to the Commission and passed on to the Conservancy)

- Federal Bay-Delta Enhancement and Water Security Act. If reauthorized, funding for ecosystem restoration should be appropriated to the Conservancy through the Department of Interior. (However, the Conservancy would need to be established as a federal entity to receive federal funding).
- California Proposition 204. Chapter 7, appropriates \$390 million to the Resources Agency "until the Legislature by statute authorizes another entity, recommended by CALFED, to carry out this chapter." The Conservancy should be the entity to receive and manage the funding.
- Proposed Water Bond. Chapter 9, Article 3, includes \$40 million appropriated to DWR for facilities to control low dissolved oxygen and other water quality problems in the lower San Joaquin River and South Delta. Improvements in low DO provides benefits for both the ERP and the Drinking Water Quality program and should be coordinated by the Commission. To the extent legally permissible, these funds should be required to be coordinated and consistent with CALFED objectives and should require Commission approval before expenditure.

Watershed Program -- Governance Proposal

Program Description (see Watershed Program Plan for complete program description)

The Watershed Program is intended to aid all Program Elements in using a comprehensive, integrated, basin-wide approach to help achieve the mission of restoring ecosystem health and improving water management. The program is focused on supporting local community based efforts as a means for designing and implementing many aspects of the CALFED program. The Watershed program will provide this support through increased coordination and collaboration between existing and future local watershed programs, and technical and financial assistance for watershed activities.

Commission Responsibilities

- Planning. In coordination with appropriate agencies and with public input, prepare an annual workplan and long-term plan, including program priorities which support the Watershed program objectives and the annual CALFED priorities. Oversee implementation of the annual workplan.